Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 89-1328

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

LOUISE W. GOODRICH,

Petitioner,

v,

COUNTY OF LOS ANGELES,

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE
CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION SEVEN

REPLY BRIEF FOR PETITIONER

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Louise W. Goodrich,
in propria persona

QUESTIONS PRESENTED

(Petitioner is satisfied that the questions presented in her Petition fully encompassed her appeal. However, County Respondent's Brief totally misconstrues the basic facts which have a bearing on the question of what issues would properly be before the Court if Certiorari were granted. As a result, Petitioner is compelled to submit the following additional question.)

5. Where the breach of mandatory duties causes a product under Federal Regulation to be rendered in nonconformance therewith, is a cause of action based thereon properly identified as being only a "state issue"?

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STATUTES AND REGULATIONS INVOLVED

Federal Statutes & Regulations

28 U.S.C. § 1257(3) . . . . . 17.

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§ 18025(b) . . . . . 7.

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Opinion of Attorney General

61 Ops Atty Gen 309 . . . . . 8.

STATEMENT OF THE CASE

Petitioner's Statement of the Case is fully set forth at pp.4-25 of the Petition.

ARGUMENT

Erroneous statements are contained in County Respondent's (hereafter "County") Brief in Opposition. (hereafter "RBO")

I

Point 1., Summary of Reasons to Deny Petition, would erroneously limit this Court's jurisdiction. (RBO p. i)

While Breach of mandatory duties under state law would ordinarily be considered a state issue, this Court nevertheless has jurisdiction to make determination whether or not the Congressional superintendence of a commercial industry has been impaired by acts taken by a political subdivision of a state. It is a federal question. It is an undisputed fact that the product under federal regulation is not in conformance therewith. (PW [Petition for Writ] p.23)

County would mislead this Court. The money damages sought are: (1) based upon the actual costs of replacement of the

damaged and unsafe structure with a sound structure which meets the minimum standards set forth in the Federal Regulations without which the legal document showing Petitioner's ownership of improvement to her real property cannot be issued and recorded; and (2) the mental and emotional distress caused by County harrassment and deprivation of fundamental Rights over such protracted period of time. (PW p. 25)

II

Point 2., Summary of Reasons to Deny Petition, erroneously states Petitioner "relies exclusively" on the Federal Act. (RBO p. ii)

This statement would mislead this Honorble Court. Petitioner has cited numerous State laws both in her pleadings and in Petition for Writ which give rise to property rights and property protected by the Constitution. These include, but are not limited to, California Health and

Safety Code §§ 18000 et seq.; CA Adm Code § 1000 et seq., certain sections of which create and define valuable property interests stemming from an "outside source such as State law". (PW p. 40)

H & S Code § 18551 requires the County to use and record a legal document to which all purchasers of manufactured homes placed upon their real property located within the geographical boundaries of the county and state, are entitled. Petitioner contends that such a document is a very valuable property in itself, created and defined by this statute. (PW p. 40)

The Federal Act did not create this property. The Federal Act regulates the structure for which this property is issued. The recorded document provides the legal proof of ownership. It affects the purchaser's Constitutional right to sell or otherwise dispose of the product, the purchaser's home. (PW p. 35, 25)

H & S Code § 18300(f) requires the County,

> "within its jurisdiction, to enforce all of the provisions of this part, the building standards published in the State Building Standards Code relating to mobilehome parks, . . and the other regulations adopted pursuant to the provisions of this part as they relate to manufactured homes . . . located outside of mobilehome parks."

The other regulations referred to include, but are not limited to, duties set forth in CA Adm Code § 1000 et seq. Petitioner and all purchasers of manufactured homes for the purpose of being placed upon their real property not located in a mobilehome park, have a very valuable property interest in the performance of these services.(PW p.28)

One such duty is Plan Check which requires a review of the <u>design</u> (floor plan)* together with the installation instructions and permanent foundation plan

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* Petitioner respectfully requests this Honorable Court to take judicial notice that this floor plan consists of a single sheet of paper. A determination whether or not it was intended for use with a permanent foundation is immediately visually apparent.

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blueprints. This ensures that the manufacturer has complied with the Federal Regulations and designed the home under consideration as a totally integrated structure meeting the requirements of the particular purpose for which it is being submitted. Plan check protects against a particular kind of injury. Failure to perform this duty gives rise to a state tort cause of action under Govt. Code § 815 et seq. Additionally, since a commercial product under Federal Regulation is involved, failure to perform adequate plan check for the purpose of determining whether the regulated product conforms with the Federal requirements, gives rise to a cause of action for the deprivation of the equal protection of Federal laws.(PW p. 27)

In the instant case the floor plans did not contain a DAPIA (Design Inspection Primary Inspection Agency) stamp of approval. It did not contain engineering

specifications required to show the design is to be used with a permanent foundation. The installation instructions, which contained a DAPIA stamp of approval, and illustrations clearly showing they were to be used with a home designed without a permanent foundation. (PW p. 12)

Installation instructions are an integral part of the design. The definition of a "manufactured home" clearly indicates the two distinct types. There are significant differences in the design and installation procedures for the two different types of support. (PW p. 12)

Plan check is a critical service relating to an aspect of manufactured homes covered by the Federal Standards. The other services set forth in CA Adm Code § 1000 et seq., also relate to, and affect, aspects covered by the Federal Standards.

CONGRESS INTENDED TO PREEMPT LOCAL POLICE POWERS WITH REGARD TO MANUFACTURED HOMES

The Act makes provision for States to participate in the Federal Enforcement Program. It sets forth specific conditions to be met. These include, but are not limited to, the State's mandatory certification that if approved, the STATE PLAN WILL BE CARRIED OUT IN FULL. States are authorized to use other entities, both private and governmental in performing its duties under the approved State Plan.(PW38)

California's State Plan is codified in H & S Code §§ 18000 et seq., and CA Adm Code §§ 1000 et seq.

H & S Code § 18015 states:

> "The provisions of this part apply to all parts of the state and supercede any ordinance enacted by any county . . . which can conflict with the provisions of this part."

H & S Code § 18025(b) states:

> "All manufactured homes and mobilehomes manufactured on or after June 15, 1976, shall comply with the [Act]."

H & S Code § 18025.5 states:

> "Pursuant to the [Act] the department is authorized to assume responsibility for

enforcement of manufactured home and mobilehome construction and safety standards relating to any issue to which a federal standard has been established. The department may adopt regulations to ensure acceptance by the Secretary of [HUD] of California's plan for administration and enforcement of federal manufactured home and mobilehome safety and construction standards."

H & S Code § 18300(a) states:

"The provisions of this part apply to all parts of the state and supercede any ordinance enacted by any county . . . whether general law or chartered, applicable to the provisions of this part. . . . the department may adopt regulations to interpret and make specific the provisions of this part and when adopted such regulations shall apply to all parts of the state."

61 Ops Atty Gen 309 states:

"A state or local standard regarding construction or safety applicable to the same aspect of performance as an existing federal standard under the [Act] is preempted by the federal standards with respect to a mobilehome as defined in the federal law, including those designed to be used with and placed upon a permanent foundation."

CA Administrative Code § 1000 states:

" The provisions of this subchapter shall apply . . . to the use, maintenance and occupancy of mobilehomes . . . and the installations for supplying fuel gas, water, electricity and the disposal of sewage from accessory structures and

mobilehomes wherever located both within and outside of mobilehome parks in all parts of the state. (For purposes of this chapter, the term mobilehome shall include and be interchangeable with the term, manufactured home.)"

CA Adm. Code § 1320 states:

"The requirements of this article shall apply to the installation of mobilehomes and apply to all parts of the state for mobilehomes installed within and outside of mobilehome parks."

A local enforcement agency wishing to gain jurisdiction over mobilehome parks and mobilehomes installed therein, are required to submit an application to HCD, the State Administrative Agency. (Full requirements are set forth in Vol. III pps. 94a.-96a., of Petition for Writ.)

CA Adm Code § 1004 states:

(a) Assumption of responsibility for the enforcement . . .by a county . . . shall be by means of an official ordinance. . . .

(3) A statement that the designated local enforcement agency will provide qualified personnel . . . .

(4) Adoption of the applicable schedule of fees . . . .

(5) (i) A statement adopting the state program and objectives . . .

(c) In addition to providing the above information, the local enforcement agency shall demonstrate actual inspection capability in making a mobilehome installation inspection to the satisfaction of the department.

(d) A statement that the forms used for . . . the statement of installation acceptance shall be those provided by the state.

When the Secretary of HUD accepted California's State Plan, it did not intend a local enforcement agency to be exempt from compliance with the provisions set forth in the approved State Plan.(PW p. 37)

The requirements for States wishing to participate in the Federal Enforcement Program are set forth in CFR § 3282.302 (Full requirements are set forth in Vol. III pps. 84a.-88a., of Petition for Writ.) CFR § 3282.302 states:

[(b)(7)] "Contain satisfactory assurances in whatever form is appropriate under State law that the designated agency has or will have the legal authority necessary to carry out the State plan <u>in full as submitted</u> for full or conditional approval." (emphasis added)

[(b)(8)] "Contain satisfactory assurances that the designated agency has or will have in its own staff or provided by other agencies of the State or otherwise, the personnel, qualified by education or experience necessary to carry out the State plan." (emphasis added)

[(b)(11)] "Include an estimate of the cost to the State of carrying out all activities called for in the State plan under this section and § 3282.303 . . . " (emphasis added)

CFR § 3282.303 states:

"The following are not required to be included in the State plan but they are urged as necessary to provide full consumer protection and assurances of manufactured home safety:

[(c)] "Provision for monitoring or the installation of manufactured homes set up in the State to assure that the homes are properly installed and, where necessary, tied down."

CFR § 3282.11(d) states: ". . . . except where a State is providing one of the services mentioned in § 3282.303, and exept where a State is acting as a PIA, no State may charge a fee for any services provided under these regulations . . . " (emphasis added)

Clearly CA Adm. Code sets fees for services contained in the State plan as it is authorized to do under the federal laws. When specific fees are charged for the

performance of specific duties, and those fees are based upon the time spent, those duties are mandatory. (PW p. 11, 12)

Since the design of a manufactured home is an aspect covered by Federal Regulation, and both the State and its political subdivisions are prohibited from taking any action or continuing in force any rule which impairs Congressional superintendence of the manufactured home industry, it follows that local police powers are in fact preempted when they do not conform to the requirements of both the federal and state manufactured home laws. The County accepted the benefits and charged the fees but failed to provide the services.(PW p.12) Act, § 5403(d) states:

> Whenever a Federal manufactured home construction and safety standards is in effect, no State or political subdivision of a State shall have any authority either to establish or continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identi-

> cal to the Federal manufactured home construction and safety standard. [Footnote; Code of Federal Regulations Standards applicable, see 24 CFR 3280.1 et seq., 3282.1 et seq.]

CFR § 3282.11 states:

> (e) No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be enforced or the action taken without impairing the federal superintendence of the manufactured home industry as established by the Act.

III

Point 3. and 4., Summary of Reasons to Deny Petition, erroneously state there was no pleading of a federal right, and that Petitioner did not allege her damages were caused by a County policy. (RBO p. ii, iii)

In pleadings as well as the Petition for Writ of Certiorari, Petitioner has demonstrated she has been and <u>is continuing to be</u> deprived of basic and fundamental Constitutional Rights, her property and valuable property interests all proximately

caused by County policies, and usual and customary practices. (PW p. 31)

County accepts the Appeal Court's Statement of the Case (RBO p.3).

Petitioner respectfully submits that the Appeal Court did not accurately summarize the allegations contained in the 7 & 8CAs of 5AC. With regard to pleading a County policy as proximately causing the deprivations complained of, the Appeal Court did not address the issue.(PW p. 36a)

In the 5AC Petitioner specifically pleaded numerous County policies, including that the County has an official policy of reliance upon the State immunity laws. Petitioner pleaded that as a result of this policy, County's training practices are inadequate. This is demonstrated by the large number of County employees and Officials who had some direct or after-the-fact responsibility to carry out County duties regarding Petitioner's manufactured

home. These include Plan Checkers, permit issuers, four field inspectors, two local office managers, one Official of the County Engineer-Facilities, Building and Safety Division, one Deputy to Supervisor Antonovich, one member of County Counsel, and one person in charge of Recording manufactured home documents. (PW p. 31)

Petitioner alleged that County Officials ratified the acts and omissions of all personnel at the local County Office located in Lancaster. (PW p. 29)

> "ratify", to approve or confirm; especially to give formal sanction to; to ratify is to make valid.
> --Webster's Dictionary.

At the time these officials ratified these various acts, the County policies with which these employees complied were explicitly stated. It is crystal clear that compliance with County policies proximately caused Petitioner's multiple deprivations. (PW p. 29-30)

The single inspector, Gaba, whose acts

are now labelled as a "mistake", is not solely responsible. If his "mistaken" use of an erroneous document was the only problem, the matter could have been cleared up years ago by the simple action of obtaining the correct document and recording it. In June, 1983, two months prior to the manufacture of the home, the floor plan and installation manual of the substituted home should have been rejected. This would have prevented the manufacturer from proceeding with the substitution.(PW56

The Conspiracy, 8CA of 5AC, set forth with particularity each step taken by each actor. (PW p. 56, 50)

> "That two persons pursue by their acts the same object often by the same means, one performing one part of the act and the other another part, so as to complete it with a view to the obtaining of the object they are pursuing is sufficient to constitute a "conspiracy" regardless of whether each conspirator knew the details of a conspiracy or of the exact part to be performed by the other conspirators or whether the details were completely worked out in advance." Picnig v. Penn. Railroad Co. (D.C. Pa 1946) 5 F.R.D. 76

"It is necessary for a § 1983 conspiracy claim that there be alleged and proved a Constitutional deprivation. A conspiracy standing alone is insufficient. Also the conspirators need not know that their conduct is unconstitutional; specific intent to cause a Constitutional deprivation is not required. However, there must be an understanding, or some concerted effort or plan, to cause harm or injury to the Plaintiff." Hampton v. Hurahan Section D.C. ILL. (1981) 522 F. Supp. 140 and 160, 620-23 (7th Cir. 1979) cert. den. 446 U.S. 754 (1980)

ADDRESSING STATEMENTS ON PAGE 2. RBO

Jurisdiction:

If this Court grants this Petition, jurisdiction would be additionally based on 28 U.S.C. § 1257(3). (PW p. 3)

This Petition was mailed Certified with return receipts on February 15, 1990. This is four days prior to the expiration date of February 19, 1990. Three copies were mailed Certified with return receipt to the County Counsel on February 15, 1990. Petitioner is not responsible for delay in delivery of mail by the U. S. Post Office.

Pertinent Statutes:

Petitioner is satisfied that the

Federal Act in its entirety is deemed applicable by Respondent County; however, the related Federal Regulations in their entirety, all of the State Manufactured Home laws and Regulations which bear on this case are also pertinent, whether cited or not, as well as the United States Constitution and Constitution of the State of California. (PW p. 3)

All other argument of Respondent County has been addressed in Petitioner's Petition for Writ of Certiorari to this Honorable Court.

CONCLUSION AND RELIEF SOUGHT

Petitioner is a United States citizen and is entitled to all of the benefits and rights provided to all citizens by the laws of the land. A citizen is entitled to seek redress through the Courts when any one of those rights has been abridged or denied.

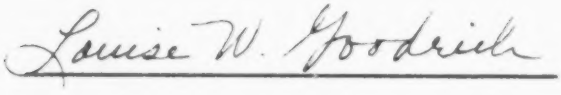
Petitioner is seeking the opportunity to resolve these problems through Due

Process. Petitioner is seeking this Honorable Court to return this case to the lower court to go to trial on the issues.

An Opinion by this Honorable Court is urgently needed. If Certiorari is denied and benefit of legal guidance not provided, then all of the deprivations and hardships which are being suffered by Petitioner will be permitted to be inflicted upon other citizens in the future.

Petitioner respectfully prays that this Honorable Supreme Court will grant her Petition for Writ of Certiorari.

Respectfully submitted,



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Dated April 2, 1990

APPENDIX

Correction of Typographical Errors

in Petition for Writ of Certiorari

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APPENDIX
(Page No.s refer to Petition pages.)

Page

Volume One

CFR §§ 3280.2(a)(16) & 3282.7(v) repeat the definition in § 5402(6) . . 13.

CFR § 3280.601 "Subpart G of this standard covers the plumbing materials, fixtures and equipment installed within or on manufactured homes. It is the intent of this subpart to assure water supply, drain, waste and vent systems which permit satisfactory functioning and provide for health and safety under all conditions of normal use." . . 15.

CFR §3280.810(a) "Dielectric strength test" . . . . . 15.

§ 3282.252 should be: 3282.254 . . . . 31.

§ 3282.302(a)(8) should be: 3282.302(b)(8) . . . 37.

§ 3280.203(b)(10) should be 3282.203(b)(10) . . . 39.

Act § 5422(c)(11) "complies with such other requirements as the Secretary may by regulation prescribe for the enforcement of this chapter." . . . 54.

Volume Three

(line 5) § 3282.203 should be: 3282.303 . . . . . 88a.